

P-421/M-88-645, REFERRING ISSUE TO OTHER DOCKET, ALLOWING TARIFF/PRICE LIST TO REMAIN IN EFFECT, AND INITIATING INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of Northwestern Bell Telephone  
Company's Open Network Architecture Filing

ISSUE DATE: July 5, 1990

DOCKET NO. P-421/M-88-645,  
P-421/EM-89-692,  
P-421/EM-89-1018, P-  
421/EM-90-171,  
P-999/CI-90-373

ORDER REFERRING ISSUE TO OTHER  
DOCKET, ALLOWING TARIFF/PRICE  
LIST TO REMAIN IN EFFECT, AND  
INITIATING INVESTIGATION

PROCEDURAL HISTORY

Between September, 1988, and March 16, 1990, Northwestern Bell Telephone Company (NWB or the Company) submitted four filings regarding Open Network Architecture (ONA) services. ONA is part of the regulatory structure adopted by the Federal Communications Commission to allow the Regional Bell Operating Companies (RBOCs) to provide certain enhanced services without the requirement of establishing a separate subsidiary. The RBOCs are required to unbundle their network services and provide nondiscriminatory access to the network to any enhanced service provider (ESP) who wishes to use elements of the network. ESPs are providers of such services as electronic mail, voice mail, audio text, or video text.

In its September 23, 1988 filing, NWB submitted tariff pages for five Basic Service Elements (BSEs), the optional network capabilities required in the provision of enhanced services. The BSEs included call forwarding don't answer, call forwarding busy line, call forwarding busy line/don't answer, message delivery service, and message waiting indication.

In July of 1989, NWB elected to be subject to Minnesota Statutes Ch. 237, the law governing emergingly competitive services, for its ONA offerings. On August 21, 1989, NWB filed price lists to replace the tariff pages previously submitted for the five BSEs.

On November 14, 1989 and March 16, 1990, NWB filed price lists for four and three new ONA

services respectively.

On September 28, 1989, the Department of Public Service (the Department) filed its Report of Investigation and Recommendation regarding NWB's filings. On November 12, 1989, NWB filed a Reply to the Department's Report. On December 7, 1989, the Department filed a Reply to NWB's letter. On January 16, 1990, MCI Telecommunications Corporation (MCI) filed a Response addressed to NWB's ONA filings and the Department's Report.

The matter came before the Commission on May 22, 1990.

### FINDINGS AND CONCLUSIONS

Three main issues have arisen from the parties' filings and presentations to the Commission. First, the issue of tariff pages versus price lists must be addressed. Second, the Commission must decide if further information must be gathered regarding ONA, and if so, how the gathering must take place.

Third, the Commission must approve or disapprove the Company's filings in this particular case.

#### **Tariff Pages Versus Price Lists**

Minn. Stat. §237.59 Subd. 1 (18) (1990 Supp.) provides that any service which was not previously offered prior to August 1, 1987 will be presumed to be subject to emerging competition unless otherwise reclassified. When NWB changed its filing mode from tariff pages to price lists in August 1989, it relied on this provision to justify the revision.

In its September 28, 1989 Report, the Department questioned whether the ONA services presented in NWB's filing were services which had not been offered prior to 1987. In its filing NWB indicated that the services had previously been offered in the Centrex and Centron tariffs, and thus had been available to some customers in Minnesota prior to August 1, 1987. In the opinion of the Department, this fact removed NWB's ONA services from the definition of an emerging competitive service under Minn. Stat. §237.59 Subd. 1 (18) (1990 Supp.). The Department reasoned that a previously tariffed service being offered to a new customer group or a new location did not constitute a new service offering.

The Department has recommended in another docket that the Commission initiate an investigation into NWB's classification of services subject to emerging competition, including the ONA services (Docket No. P-421/EM-89-694). The Commission finds that the basic question of price lists versus tariff sheets for ONA will be most appropriately addressed in the broader context of the 694 docket.

#### **Information Regarding ONA**

ONA is an issue of emerging interest and importance in utility law. There are ongoing investigations of these services by the FCC and a number of other states. State agencies must consider possible overlapping state-federal responsibilities, the effects of ONA on Plain Old Telephone Service (POTS), potential for improper cross-subsidization, and other complex and important issues.

In Minnesota, the Department has recommended that the Commission initiate an investigation into ONA to resolve these issues. Interested parties would include NWB, ESPs, groups representing potential users, state regulatory agencies, and others. The Department has also submitted a list of topics which the parties should address in order to present the Commission with sufficient information. (See attached Department list).

The Commission agrees with the Department that it is necessary to gather and assess information regarding ONA at this time. The question that remains is the procedural method for the information-gathering. The Department has recommended that the Commission initiate a full generic investigation of ONA. The investigation would be commenced as a "paper proceeding," in which the facts would be elicited from the parties by means of written filings. NWB and MCI support a less formal "roundtable" approach to gathering information. These companies argue that the Commission will be best aided if the parties sit down in a series of informational workshops. At these meetings the Commission, the Department, the companies and other interested parties could meet to identify issues arising from ONA. The roundtable participants would attempt to resolve issues among themselves. Those issues which could not be dealt with could become the object of later, more formal proceedings.

The Commission favors the Department's recommendation of a formal generic investigation of ONA in Minnesota. For the reasons stated previously, the issues arising from ONA are of great importance. A formal proceeding in which all interested parties are given the opportunity to express their concerns and to supply information is the best means of dealing with these far-ranging topics. A consolidated proceeding will be the best method of coordinating state policy with emerging national ONA decisions. Finally, a "paper proceeding" will allow every party to submit filings in a neutral venue.

The Commission will adopt the Department's recommendation that a full investigation of ONA in Minnesota be launched. Parties will be given 120 days from the date of this Order to submit written comments. The parties will make recommendations in their written filings regarding the procedural form of the remainder of the investigation. After its consideration of these comments the Commission will set the procedural mode for the rest of the generic investigation.

### **Consideration of the Company's Filed Tariffs/Price Lists**

NWB has submitted four tariff/price list ONA filings for consideration by the Commission. Although the issues surrounding ONA will now be a subject of investigation, the Commission will not delay implementation of the Company's tariffs/price lists until the conclusion of the investigation. The Department has reported that any possible eventual price changes arising from the investigation would not likely be disruptive to either NWB or NWB's customers. For this reason

the Commission will adopt the Department's recommendation and will allow the tariffs/price lists to go into effect pending the Commission's findings at the conclusion of its ONA investigation.

### ORDER

1. The Commission hereby initiates an investigation into the issues related to the implementation of ONA in Minnesota. The investigation shall be a comprehensive proceeding under Docket No. P-999/CI-90-373.
2. The procedure for the above investigation shall be as follows:
  - a. Interested parties shall submit written comments on the issues presented by the Department in the attached list, plus other relevant issues, within 120 days of the date of this Order.
  - b. In their written comments parties shall submit their recommendations for procedure for the remaining investigation.
  - c. Parties shall respond to information requests of other parties within 10 days of receipt of said requests.
3. The question of whether NWB should submit tariff pages or price lists for its ONA services will be referred to Docket No. P-421/EM-89-694 for resolution.
4. NWB's previously filed price lists will go into effect on a conditional basis subject to the Commission's findings in its investigation of ONA.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

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